

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAVIER TUETO,

COMPLAINT

Plaintiff,

-against-

THE UNITED STATES OF AMERICA, THE
UNITED STATES DEPARTMENT OF HOMELAND
SECURITY, THE UNITED STATES IMMIGRATION
AND CUSTOMS ENFORCEMENT, HOMELAND
SECURITY INVESTIGATIONS, and "JOHN DOE"

Defendants,

**Name being fictitious.*

-----X

The plaintiff complaining of the defendants, by her attorneys, hereinafter alleges the following:

AS AND FOR A FIRST CAUSE OF ACTION

1. At all times hereinafter mentioned, plaintiff was and still is a resident of the State of New York, County of Queens.

2. This Court has jurisdiction over the claim asserted against the defendants, THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, and HOMELAND SECURITY INVESTIGATIONS.

3. That on the 12th Day of May 2022, a motor vehicle accident occurred on East 34th Street and Park Avenue, New York, New York, involving the plaintiff and defendants, which caused the plaintiff to sustain serious injuries as a result.

4. That plaintiff, JAVIER TUCTO , was the operator of a 2012 Dodge sedan bearing New Jersey license plate number K20NWB.

5. That plaintiff, JAVIER TUCTO, was operating the 2012 Dodge sedan with the permission and consent of Alexandra Tucto, the owner of the vehicle.

6. That upon information and belief, on May 12, 2022 a 2018 Ford SW/SUV, bearing New York plate KKC3678 was registered to the defendant, HOMELAND SECURITY INVESTIGATIONS.

7. That on the 12th day of May 2022, the vehicle bearing, license plate number KKC3678, was owned by defendants, THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, and HOMELAND SECURITY INVESTIGATIONS.

8. That on the 12th day of May 2022, the defendant, JOHN DOE, was employed by THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, and HOMELAND SECURITY INVESTIGATIONS.

9. That upon information and belief, at the aforesaid time and place, the defendant, JOHN DOE, bearing shield Ten Forty was regularly in the service and employ of THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, and HOMELAND SECURITY INVESTIGATIONS, and was acting within the scope of his employment.

10. That on the 12th day of May 2022, the defendant, JOHN DOE, bearing shield Ten Forty, was operating a 2018 Ford SW/SUV bearing license plate number KKC3678 with the knowledge, permission, and consent, and of its owner the defendants, THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, and HOMELAND SECURITY INVESTIGATIONS.

11. That on the 12th day of May 2022, the defendant, JOHN DOE, was controlling an SW/SUV bearing license plate number KKC3678 with the knowledge, permission, and consent, and of its owner the defendants, THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, and HOMELAND SECURITY INVESTIGATIONS.

12. That on the 12th day of May 2022, at approximately 12:07 a.m., the vehicle operated by the defendant, JOHN DOE, bearing shield no. Ten Forty, was on East 34th Street at or near Park Avenue, New York, New York.

13. That at all the times hereinafter mentioned, East 34th Street and Park Avenue, New York, New York, were and still are public thoroughfares.

14. That on 12th Day of May 2022, while plaintiff, JAVIER TUCTO, was lawfully an operator of a 2012 Dodge sedan at the aforesaid location, when his vehicle was struck by the motor vehicle owned by the defendants, THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, and HOMELAND SECURITY

INVESTIGATIONS, and operated and controlled by the defendant, JOHN DOE, bearing shield no. Ten Forty, causing the plaintiff to sustain serious personal injuries.

15. That at the aforesaid time and place, the defendant, JOHN DOE, bearing shield no. Ten Forty, operating the motor vehicle bearing license plate number KKC3678 with the express knowledge, permission and consent of the defendants, THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, and HOMELAND SECURITY INVESTIGATIONS, did so negligently and in violation of the laws, statutes and ordinances of the State of New York and the regulations of the City of New York causing severe and serious injury to the plaintiff, JAVIER TUCTO; the defendants were further negligent, in driving said motor vehicles without due care or regard for pedestrians; that no proper lookout was kept; in failing to give warning to plaintiff; in failing to honk its horn; in not having lights and sirens; in operating the vehicle in excess of the speed limit; in driving through a red light; in failing to obey traffic control devices then and there prevailing; in failing to keep a safe and proper distance; in failing to yield the right of way; in failing to sound a warning; in negligently striking the plaintiff's vehicle; and that same were not kept under reasonable, lawful and proper control.

16. Defendants violated said rules, regulations, codes, statutes, and violations that the Court will take judicial notice at the time of the trial of this action including but not limited to: New York State Vehicle and Traffic Law Sections, 1144A(b), 1180a, 375, 382c, 1111, 376a, 1212, 1140 and 1143.

17. As a result of the aforementioned, the plaintiff, JAVIER TUCTO, sustained serious personal injuries as defined by Section 5102 of the Insurance Law of the State of New York.

18. That as a result of the aforementioned incident, the plaintiff was caused to suffer severe and permanent personal injuries, pain suffering, mental anguish, loss of enjoyment of life and disability, all of which required medical care and treatment and will continue in the future, and he was further caused to sustain serious economic damage by reason of loss of employment and income, all of which is expected to continue in the future.

19. Plaintiff pursuant to Rules 38 and 81(c) of the Federal Rules of Civil Procedure hereby demands a trial by jury on all of the issues of fact in this action.

20. That on the 2nd day of June, 2022, the plaintiff filed a claim with Office of General Counsel, The United States of America, EPA claims office, and Homeland Security Investigations, which are agencies and divisions of the defendant, THE UNITED STATES OF AMERICA.

21. To date, this claim has not been denied and over six months have passed since this claim was submitted.

22. This claim has been commenced within two years as prescribed by 28 U.S.C. § 2401(b).

23. That as a result of the aforementioned the plaintiff, JAVIER TUCTO, sustained severe personal injuries, some of which are believed to be of a permanent nature preventing the plaintiff from performing her normal activities of life and business and resulting in great pain to his mind and body, loss of enjoyment of life and resulting in him incurring substantial expenses

for medical care, hospitalization, loss of earnings capacity and other expenses occasioned by the injuries and disability sustained by him as a result of the aforementioned, in a sum which will not exceed the amount of TWO MILLION DOLLARS (\$2,000,000.00), together with costs and disbursements of this action.

. WHEREFORE, the plaintiff demands judgment against the defendants in a sum not to exceed the sum of TWO MILLION DOLLARS (\$2,000,000.00), together with costs, disbursements and interest relation to each cause of action and for such other and further relief as this court may deem just and proper.

Dated: Garden City, New York
February 28, 20223

Yours, etc.

Decolator, Cohen & DiPrisco, LLP



Attorneys for Plaintiff

1399 Franklin Avenue, Suite 300
Garden City, New York 11530
(516) 742-6575

STATE OF NEW YORK, COUNTY OF

ss.:

I, the undersigned, an attorney admitted to practice in the courts of New York State,

Check Applicable Box

☐ Certification By Attorney

certify that the within

☐ Attorney's Affirmation

has been compared by me with the original and found to be a true and complete copy.

state that I am

the attorney(s) of record for

action; I have read the foregoing

the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by

in the within

and know the contents thereof;

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated:

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

ss.:

I, the undersigned, being duly sworn, depose and say: I am

Check Applicable Box

☐ Individual Verification

in the action; I have read the foregoing

and know the contents thereof; the same is true to my own knowledge, except

as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

☐ Corporate Verification

the

of

a

corporation and a party in the within action; I have read the foregoing

and know the contents thereof; and the same is true to my own knowledge,

except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. This

verification is made by me because the above party is a corporation and I am an officer thereof.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Sworn to before me on

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

ss.:

(If more than one box is check—indicate after names type of service used.)

I, the undersigned, being sworn, say: I am not a party to the action, am over 18 years of age and reside at

On I served the within

Check Applicable Box

☐ Service By Mail

by mailing a copy to each of the following persons at the last known address set forth after each name below.

☐ Personal Service on Individual

by delivering a true copy of each personally to each person named below at the address indicated. I knew each person served to be the person mentioned and described in said papers as *a party therein*:

☐ Service by Electronic Means

by transmitting a copy to the following persons by ☐ FAX at the telephone number set forth after each name below ☐ E-MAIL at the E-Mail address set forth after each name below, which was designated by the attorney for such purpose, and by mailing a copy to the address set forth after each name.

☐ Overnight Delivery Service

by dispatching a copy by overnight delivery to each of the following persons at the last known address set forth after each name below.

Sworn to before me on

The name signed must be printed beneath

Index No. Year
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RJI No.

Hon.

JAVIER TUCTO,

Plaintiff,

-against-

THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOME
LAND SECURITY, THE UNITED STATES IMMIGRATION AND CUSTOMS
ENFORCEMENT, HOMELAND SECURITY INVESTIGATIONS and "JOHN DOE"*

Defendants.

**Name being fictitious*

COMPLAINT

DECOLATOR, COHEN, & DIPRISCO, LLP
ATTORNEYS AT LAW

Attorneys for

Plaintiff

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GARDEN CITY, NEW YORK 11530

TEL: (516) 742-6575

FAX: (516) 742-6706

To

Signature (Rule 130-1.1-a)



Attorney(s) for

Print name beneath

Decolator, Cohen & DiPrisco, LLP

Service of a copy of the within

is hereby admitted.

Dated,

.....
Attorney(s) for

Please take notice

☐ NOTICE OF ENTRY

that the within is a (*certified*) true copy of a
duly entered in the office of the clerk of the within named court on

☐ NOTICE OF SETTLEMENT

that an order
settlement to the HON.
of the within named court, at
on

at

M

of which the within is a true copy will be presented for
one of the judges

Dated,

Yours, etc.

DECOLATOR, COHEN, & DIPRISCO, LLP
ATTORNEYS AT LAW

Attorneys for

To

Attorney(s) for

Office and Post Office Address

1399 Franklin Avenue • Suite 300

GARDEN CITY, NEW YORK 11530